IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3468 OF 2006

Progressive Education Society .. Petitioner.

Vs.

Bandu Sakharam Chavan & Ors. ..Respondents.

...

Mr. S.V. Pitre for the Petitioner.
Mr. P.N. Joshi for the Respondents.
Mr. M.H. Solkar, AGP for the State.

WITH

WRIT PETITION NO.3469 OF 2006

Satish Bhalchandra Gavali ..Petitioner.

Vs.

Bandu Sakharam Chavan & Ors. ..Respondents.

...

Mr. R.K. Saroj for the Petitioner.
Mr. P.N. Joshi for the Respondents.
Mr. M.H. Solkar, AGP for the State.

...

CORAM: DR. D.Y. CHANDRACHUD, J.

14th July, 2006.

P.C. :

1. The School Tribunal by its order dated 13th April, 2006 quashed and set aside, in an appeal filed by the First Respondent, the decision of the management in promoting the Second Respondent, Satish B. Gavali, to the post of Head Master of

Modern High School, Warje Malwadi, Pune with effect from 10th June, 2003. The management has been directed to promote the First Respondent as Head Master in the same school with effect from June 2003 with consequential benefits and full back wages. The order of the School Tribunal has been challenged by the management as well as by the Second Respondent The School Tribunal has come to the conclusion that the First Respondent as a scheduled caste candidate was entitled to be appointed as a Head Master since the roster point upon the resignation of the earlier Head Master would fall to the scheduled caste category.

2. At the hearing of the Petitions, it has been urged on behalf of the management that even if the School Tribunal were to hold that the post was required to be allotted to a scheduled caste candidate, the Tribunal at the highest could have directed the management to consider the claims of scheduled caste candidates in accordance with their position in the seniority list and in accordance with law. Hence, it was urged that the direction to promote a particular candidate was not warranted.

3. There is merit in the aforesaid submission. It is a settled

principle of law that even if a Court or Tribunal holds that a particular promotion is invalid, the consequential direction that should appropriately be passed is to consider the claims of eligible candidates in accordance with law. The management has stated before the Court that it has no objection to comply with the order of the School Tribunal by appointing the senior- most scheduled caste candidate to the vacant post of Head Master in accordance with law. In so far as the Second Respondent is concerned, the management has stated that upon the appointment of the senior- most scheduled caste candidate as Head Master, the claim of the Second Respondent to be accommodated in an available vacancy for a scheduled tribe candidate shall also be considered in accordance with law. The Court is informed that the Second Respondent has no objection and that the aforesaid statement would meet his grievance.

4. In the circumstances, by consent the Petitions are disposed of in the light of the following directions :

The directions issued by the School Tribunal in clause 3 of the operative order dated 13th April, 2006 shall be substituted by

the following directions :

i) The management, Progressive Education Society shall in pursuance of the directions issued by the School Tribunal consider the claim of the senior-most scheduled caste candidate for appointment as a Head Master subject to eligibility;

ii) The candidate so appointed by the management would be entitled to all consequential benefits;

iii) In the event that the management promotes the First Respondent to the post of Head Master, the First Respondent will be entitled to the benefit of the consequential directions that have been issued by the School Tribunal in regard to the payment of emoluments and other benefits:

iv) In the event that the claim of the First Respondent is not accepted by the management, the First Respondent would be at liberty to espouse such remedies as are open to him in law;

v) In so far as the Second Respondent is concerned,

counsel appearing for the management states that upon the appointment of the senior most scheduled caste candidate as a Head Master, the claim of the Second Respondent for appointment shall be duly considered against any other vacancy that may be available.

The Petitions are disposed of by consent since no other point has been pressed on either side.